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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/216,545	12/18/1998	THOMAS HAROLD ROESSLER	14.541	9533

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KIMBERLY-CLARK WORLDWIDE, INC.  
401 NORTH LAKE STREET  
NEENAH, WI 54956

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/30/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/216,545

Applicant(s)

ROESSLER ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 40-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 and 27 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

In response to a telephone communication with Alyssa Dudkowski during the first part of December 2003, the FINAL rejection mailed <sup>per 12-21-03</sup> 12-25-03 is withdrawn. In that telephone communication it was brought to the Examiner's attention that the application had been identified as a RCE rather than a CPA as per the request of 12-18-02. A check of the original request and PALM were made and the file jacket corrected to indicate that the application was a CPA rather than an RCE. The Examiner apologizes for the misclassification. A nonfinal action on the merits of the CPA follows.

#### ***Continued Prosecution Application***

1. The request filed on 12-18-02 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/216,545 is acceptable and a CPA has been established. An action on the CPA follows.

#### ***Specification***

2. The amendment to page 22, lines 1-7 does not comply with 37 CFR 1.121 because such does not include the entire paragraph and the portion provided does not correspond textually to page 22, lines 1-7 as they appear in the application. Any response to this action should include an amendment which is in compliance with 37 CFR 1.121.

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### ***Drawings***

3. The corrected or substitute drawings were received on 7-8-03(Figures 1-2 and 4) and 6-27-01(Figure 3). These drawings are approved by the Examiner.

### ***Description***

4. The abstract of the disclosure is objected to because the abstract is still too long, i.e. must be no more than 150 words in length for printing purposes. Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: In the Summary of the Invention section, page 22 of the amendment, line 2, "are" should be --is--, on line 5, "panels" should be --panel-- and "edges" should be --edge--.

Appropriate correction is required.

### ***Claim Objections***

6. Claim 49 is objected to because of the following informalities: In claim 49, subsection f), line 2, "one" should be --on--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

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to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 40-47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCA '290 in view of Larsson PCT '463.

With regard to claims 40-46: See SCA '290 at Figures; page 9, lines 17-20; page 5, lines 9-11, the absorbent chassis; elements 28 and 4, page 7, lines 18-24, page 11, lines 11-15, the elastic back panel 13; page 5, line 19-page 6, line 10, page 7, lines 6-7, page 11, lines 11-15, elastic front panel 8 and separate 5 or unitary engaging portions; page 10, lines 10-11, the seam 17. The SCA device, includes all the claimed structure except for the releasable bond as set forth in subsection e) of claim 40 and the specifics thereof in the dependent claim 46. However, Larsson teaches a similar article which also includes a releasable bond in addition to a refastenable joint to improve reliability of maintaining the article in a prefastened condition particularly when it is being used, i.e. pulled on or off the hips, i.e. to maintain the shape of and put on like a pair of ordinary underpants, see, e.g., Figures, page 2, lines 1-24, page 5, line 25-page 7, line 10, page 7, lines 21-24, page 8, lines 21-23, e.g. "at least one point bond" as claimed, page 9, lines 10-12. To employ a releasable bond as taught by Larsson on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would improve the reliability of maintaining the prefastened condition during use and the desirability of such by SCA, attention is reinvited to page 9, lines 17-20 of SCA. With regard to claims 47 and 49, they are product by process claims. In accord with MPEP 2113, even if the product of the prior art

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combination is made by a different process, since the end product is obviously the same as the end product of claim 47, i.e. the end product is a weld whether ultrasonically formed or not, and claim 49, the claim does not distinguish over the prior art.

9. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over SCA '290 and Larsson as applied to claim 40 above, and further in view of Bruemmer '873.

SCA and Larsson teach all the claimed structure except for a releasable bond of a specific peel strength, i.e. no more than about 1500 grams, i.e. or in other words no more than the maximum force allowing opening or unfastening of the bond. However, Bruemmer at col. 4, line 55-col. 5, line 4 teaches fasteners having a maximum unfastening force of no more than about 1500 grams so as to permit an adult to open such fastener but to prevent a child from doing so. See also page 1, lines 10 et seq of SCA, i.e. use on babies or children and by adults or use on and by adults, and cited portions of Larsson supra, i.e. releasable bonds to prevent unintended opening. Therefore, to employ a releasable bond defining a peel strength of no more than 1500 grams on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would allow intended opening by adults and the desirability of such by the prior art.

### ***Response to Arguments***

10. Applicant's remarks on pages 9-11 with regard to formal matters have been considered but are deemed moot in that the issue has not been reraised or is deemed nonpersuasive for the reasons set forth supra. Applicant's remarks with regard to the prior art on

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pages 11-14 have been carefully considered but are either deemed moot, i.e. the double patenting rejection on 6,113,717 was overcome by the filing of a terminal disclaimer and the common ownership of 706,294, 6,036,805 and 6,113,717 was established, in that the issue has not been reraised.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Buell et al '234, already of record, as well as Sasaki et al teach the conventionality of bonding by ultrasound.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to K. M. Reichle whose telephone number is 703-308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo, can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

KMR

November 18, 2003

*K.M. Reichle*  
KARIN REICHLÉ  
PATENT EXAMINER